ORIGINAL

FILED

08 AUG 21 PM 12:20

CLERK, U.S. DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

BY: ECL DEPUTY

EDGAR B. WASHBURN (#34038)
ewashburn@mofo.com
SHAYE DIVELEY (#215602)
sdiveley@mofo.com
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, California 94105-2482
Telephone: (415) 268-7000
Facsimile: (415) 268-7522

Attorneys for Plaintiff
MESA GRANDE BAND OF MISSION INDIANS

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

MESA GRANDE BAND OF MISSION INDIANS, Plaintiff, v. DIRK KEMPTHORNE, Secretary of the United States Department of the Interior, and DOES 1-100, Defendant.	Case No. '08 CV 1544 LAB NLS COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

BY FAX

INTRODUCTION

1. Plaintiff the Mesa Grande Band of Mission Indians ("Mesa Grande") brings this action for administrative writ of mandate, declaratory relief and injunctive relief against Defendants to set aside patents for certain Indian lands within the Santa Ysabel Reservation in Southern California and to issue new patents that reflects the historic use and possession of such lands by Mesa Grande.

2. Mesa Grande has no adequate administrative remedies. Mesa Grande has repeatedly requested that Defendants comply with their obligations and redress the breaches of trust herein complained of, without success. Mesa Grande has exhausted all avenues of redress

CR

other than this action, and only this Court can provide Mesa Grande the relief to which it is entitled.

PARTIES

3. Mesa Grande is a federally recognized American Indian Tribe in southern California. The Mesa Grande Reservation is located near the town of Santa Ysabel, California in the hills above the Cleveland National Forest.

4. Defendants are the officers empowered by Congress to administer affairs related to land patents held in trust for American Indian Tribes. Defendants are charged with the proper discharge the United States' duty to hold in trust 55.7 million acres of land for American Indians, Indian tribes, and Alaska Natives.

5. Defendant Kempthorne is Secretary of the Interior and chief officer of the Department of the Interior, and as such is charged by law with carrying out the duties and responsibilities of the United States as trustee for Mesa Grande.

6. Defendant named herein as DOE 1 is the Assistant Secretary of the Interior–Indian Affairs and head of the Bureau of Indian Affairs ("BIA") within the Department of the Interior. As such, the Assistant Secretary is the delegate of Defendant Kempthorne for carrying out certain of his responsibilities with respect to the trust duties for Mesa Grande. Mesa Grande sued DOE 1 under a fictitious name because the true name is not known to Mesa Grande at this time. Mesa Grande will amend this Complaint to insert the true names and capacities when ascertained.

7. Defendants named herein as DOES 2 to 100, and each of them, are sued under fictitious names because their true names and capacities are not known to Mesa Grande at this time. Mesa Grande will amend this Complaint to insert their true names and capacities when ascertained. Mesa Grande is informed and believes and thereon alleges that each of the fictitiously named Defendants is responsible in some manner for the occurrences herein alleged, and that Mesa Grande's injuries as herein alleged were proximately caused by such Defendants.

JURISDICTION AND VENUE

8. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1346 (federal defendant). Jurisdiction is further proper under 28 U.S.C. § 1361, in

that this action is an action of mandamus to compel an officer or employee of the United States to perform a duty owed to Mesa Grande.

9. The Court also has jurisdiction under 28 U.S.C. § 1362, which vests district courts with "original jurisdiction of all civil actions, brought by any Indian tribe or band with a governing body duly recognized by the Secretary of the Interior, wherein the matter in controversy arises under the Constitution, laws, or treaties of the United States." There is a present, actual, and justiciable controversy between the parties; the requested relief is, therefore, proper under 28 U.S.C. § 2201 (declaratory relief) and § 2202 (injunctive relief).

10. Venue is proper under 28 U.S.C. § 1391(e), in that the relevant events occurred and are occurring in this district.

FACTUAL AND LEGAL BACKGROUND

11. On December 27, 1875, President Ulysses S. Grant issued an executive order to set aside approximately 15,000 acres for the Mission Indians known as "Santa Ysabel—including Mesa Grande." This was followed by another executive order in 1883, which set aside a 120-acre tract for the "Mesa Grande Indian Reservation."

12. On January 12, 1891, Congress enacted a statute, entitled "An act for the relief of the Mission Indians in the State of California," that established a three-person commission to select "a reservation for each band or village of the Mission Indians residing within said State, which reservation shall include, as far as practicable, the lands and villages which have been in the actual occupation and possession of said Indians." The selection of each reservation would be valid when approved by the President and the Secretary of the Interior. 26 Stat. 712, § 2.

13. Based on the 1891 act, the Smiley Commission was charged with determining where the Mission Indian Bands were living. The resulting report was approved by President Benjamin Harrison by executive order dated January 29, 1891, and authorized patents for more than 15,000 acres (known as Tracts One, Two, and Three) to the Santa Ysabel Band, "including the Mesa Grande," and for 120 acres solely for Mesa Grande. The patents were issued on February 10, 1893.

///

14. The patents for the Santa Ysabel Band created by the Smiley Commission were a mistake and did not accurately reflect the intentions of the United States to issue patents for Tracts One and Two to Mesa Grande. Indeed, almost from the start, the Smiley Commission's conclusions were called into questions by Mesa Grande and the federal government. In correspondence from 1925 to 1971, Defendants admitted that the land patents were made erroneously, in that the Tracts One and Two were historically occupied and used by Mesa Grande, not the Santa Ysabel Band. Congress also expressed an understanding that Mesa Grande was the proper patentee for Tracts One and Two by twice granting land to Mesa Grande, in 1926 and 1988, adjacent to the tracts. 44 Stat. 496; 102 Stat. 2938. Indeed, in 1926, Congress granted 80 acres to Mesa Grande "for the occupancy and use of the Indian of the Mesa Grande Reservation, known also as Santa Ysabel Reservation Numbered 1." 44 Stat. 496. Furthermore, all area maps refer to the land as "Mesa Grande" and both the Department of Housing and Urban Development and the Bureau of Indian Affairs have treated the land as if it belongs to Mesa Grande when disbursing funds.

15. Despite widespread recognition that Mesa Grande is the rightful owner and occupant of Tracts One and Town, Mesa Grande was informed in 1991 that they could not make improvements on Tracts One and Two without the approval of the Santa Ysabel. Since that time, Mesa Grande have been prevented from its lawful use, possession, and ownership of Tracts One and Two, including, but not limited to:

- Since the 1990s, the BIA has awarded road improvement grants to Santa Ysabel—not to Mesa Grande. Despite receiving such monies, Santa Ysabel has not improved the road systems on Tracts One and Two and has prevented efforts by Mesa Grande to do so. This has seriously affected Mesa Grande tribal members, particularly because emergency vehicles cannot gain passage.
- Santa Ysabel has expressly prohibited Mesa Grande from conducting any projects on Tracts One and Two, including, but not limited to, Housing Improvement Program ("HIP") housing, road maintenance, Housing and Urban Development housing, Indian

Health Service water and sewer services, woodcutting of any kind, and any type of economic development.

- Since 2003, Mesa Grande has been unable to obtain HIP homes for tribal members, including some of the tribal Elders, because Santa Ysabel has been unwilling to agree to appropriate lease terms.
- Santa Ysabel has repeatedly denied Mesa Grande access to ancestral grounds, including areas where tribal members are buried.
- Since 2005, Santa Ysabel has been directing additional members to Tracts One and Two for their occupancy, contrary to the interests of Mesa Grande.
- Mesa Grande members living on Tracts One and Two have been unable to make improvements to their homes or construct fencing for their livestock due to interference by Santa Ysabel.

Examples of communications from Santa Ysabel to Mesa Grande tribal members interfering with such rights are attached hereto as **Exhibit A**. Mesa Grande is unable to occupy and possess its lands or to take action to improve its lands, and, thus, has been deprived of the benefits of ownership and quiet enjoyment.

16. Defendants have been aware of its error in issuing the patents for Tracts One and Two at least since 1925 and the impacts of such error on Mesa Grande, but have failed to take any action to remedy its actions. Specifically, Defendants have the power and obligation to reform the patents to remedy their errors and to ensure the proper exercise of their trust duties. Mesa Grande has requested repeatedly, without success, that Defendants to comply with their obligations and redress the breaches of trust herein complained of. Defendants have, thus, failed to exercise their mandatory duties in the manner required by law. As a consequence of these and other acts of mismanagement in breach of trust and errors committed by Defendants, Mesa Grande has been prohibited from full use, possession, control, and enjoyment of its tribal lands at least since 1991.

///

///

EXHAUSTION OF REMEDIES

17. Mesa Grande has performed all conditions precedent to the filing of this complaint. In 1976, in an attempt to alleviate the confusion surrounding the proper ownership of Tracts One and Two, Administrative Law Judge ("ALJ") William E. Hammett held a series of administrative hearings. In his decision, ALJ Hammett held that Mesa Grande had shown by the preponderance of the evidence that the Smiley Commission's report was erroneous. However, ALJ concluded that reissuance of the patents to Tracts One and Two was beyond the scope of an administrative hearing, but held that a federal court would be the proper forum for such a remedy. Accordingly, Mesa Grande has exhausted its administrative remedies.

18. Mesa Grande has no plain, speedy, and adequate remedy in the ordinary course of law, other than the relief sought in this Complaint.

FIRST CAUSE OF ACTION

(Violation of Administrative Procedure Act – 5 U.S.C. §§ 701-706)

19. Mesa Grande incorporates allegations 1 through 18.

20. Defendants have statutory and general trust duties to manage Indian resources and lands for the benefit of Indians. 25 U.S.C. § 348; *United States v. Mitchell*, 463 U.S. 206 (1983). As a result, Defendants have a fiduciary duty to Mesa Grande that the lands held in trust by the United States are properly managed, supervised, and controlled so that the best interests of Mesa Grande are served and the property rights of Mesa Grande are not alienated.

21. Defendants have continuously and egregiously failed to comply with these and other responsibilities of a trustee and continue to do so. Such breaches of trust include, without limitation:

a. Failure to remedy the mistakes in the patents by reforming the patents, despite express recognition that the patents were erroneous and did not accurately reflect the use and occupancy of Mesa Grande.

b. Failure to prevent others from interfering with the rights of Mesa Grande to fully use and occupy its tribal lands, including, but not limited to, the full use and enjoyment of ancestral lands, the procurement of home loans ,and the installation of improvements (including to roads, homes, and fences).

22. Defendants' actions were not taken in accordance with the law, without observance of the procedures required by the law, and are arbitrary and capricious within the meaning of the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701-706. Defendants' failure to remedy their mistakes in the patents constitutes an ongoing violation of the APA and an evasion of its important non-discretionary duties under the law. *Id.*

23. The acts of Defendants constitute final agency action and the unlawful withholding of action. Mesa Grande is entitled to legal review of the Defendant's action under 5 U.S.C. § 702.

24. Mesa Grande has suffered legal wrong and is aggrieved and adversely affected thereby. Mesa Grande is entitled to have this Court decide all relevant questions of law concerning Defendants' obligations and responsibilities under the law, and to have this Court issue corresponding declaratory and other equitable relief. Mesa Grande is further entitled to mandatory injunctive relief compelling Defendants to perform their duty and to prevent further interferences with its rights.

SECOND CAUSE OF ACTION

(Violation of Statutory Trust Obligations – 25 U.S.C. § 345)

25. Mesa Grande incorporates allegations 1 through 24.

26. Mesa Grande is composed of members that are in whole or in part of Indian blood or descent.

27. Mesa Grande has been unlawfully denied or excluded from the patents held in trust by Defendants that encompass Mesa Grande's tribal lands to which Mesa Grande is lawfully entitled by Act of Congress. Under 25 U.S.C. § 345, Mesa Grande may commence and prosecute this action against the United States as a result of the errors committed by Defendants with respect to said patents.

28. Defendants owe to Mesa Grande the duty to ensure compliance of the obligations of the United States as trustee for its benefit. By continuously failing to remedy the errors in the

patent, Defendants are in violation of its statutory trust obligations and is subject to this action. Mesa Grande is entitled to an order in the nature of a writ of mandamus to compel Defendants to perform such duties.

THIRD CAUSE OF ACTION

(Violation of Common Law Trust Obligations)

29. Mesa Grande incorporates allegations 1 through 28.

30. Mesa Grande is composed of members that are in whole or in part of Indian blood or descent.

31. The federal government owes Mesa Grande a common law trust obligations to provide Mesa Grande with secure title to its land.

32. Mesa Grande claim to have been unlawfully denied or excluded from the patents held in trust by Defendants that encompass Mesa Grande's tribal lands to which Mesa Grande are lawfully entitled. Mesa Grande's right to land stems from, *inter alia*, Indian title, historic occupation of the land, the General Allotment Act of 1887, and the various executive orders regarding Mesa Grande's land rights. Based on federal common law regarding the federal government's tribal trust obligation, Mesa Grande commences and prosecutes this action against the United States as a result of the errors committed by Defendants with respect to Mesa Grande's land rights.

33. Defendants owe Mesa Grande a duty to ensure compliance of the obligations of the United States as trustee for its benefit. By continuously failing to remedy the errors in the patent, Defendants are in violation of its statutory trust obligations and is subject to this action. Mesa Grande is entitled to an order in the nature of a writ of mandamus to compel Defendants to perform such duties.

PRAYER FOR RELIEF

WHEREFORE, Mesa Grande prays:

(1) For a determination that Defendants are in violation of the Administrative Procedures Act.

///

(2) For a determination that Defendants are in violation of their statutory trust and common law obligations to Mesa Grande.

(3) For a determination construing the obligations of Defendants to Mesa Grande, declaring that Defendants have breached, and continue to breach, such obligations and directing Defendants to comply with said obligations.

(4) For a preliminary and mandatory injunction compelling Defendants to vacate the patents and issue new patents reflective of Mesa Grande's actual use and occupancy of the lands at issue.

(5) For a preliminary and mandatory injunction restraining and enjoining any hindrance or interference with Defendants' exercise of their statutory duties.

(6) For a preliminary and mandatory injunction restraining and enjoining any hindrance or interference with Mesa Grande's lawful use, possession, and ownership of Tracts One and Two.

(7) For an award of Mesa Grande's costs of suit, including, without limitation, attorneys' fees under the Equal Access to Justice Act and under general principles of law and equity, and the fees and costs of expert assistance.

(8) For such other and further relief as the Court may deem just and proper.

Dated: August 20, 2008

MORRISON & FOERSTER LLP

By: [signature]
Shaye Diveley

Attorneys for Plaintiff MESA GRANDE BAND OF MISSION INDIANS

Exhibit A

Exhibit A

Carlos Guassac, Tribal Chairman
Mesa Grande Band of Mission Indians
and Council Members
P.O. Box 270
Santa Ysabel, CA. 92070

In accordance to the attached Resolution, The Santa Ysabel Band of Mission Indians feels it has become necessary, due to your failure and lack of cooperation in requesting prior approval from our General Council before conducting any projects on Santa Ysabel Tracts 1 and 2, we have no recourse but to deny you any further project activities to take place on either Tract 1 & 2, these activities include but are not limited to:

1. HIP Housing
2. Road Maintenance
3. HUD Housing
4. Any type of economic development
5. Indian Health Service water and sewer
6. Wood cutting of any type, personal use or sales.

* The Sheriffs Department has been notified to confiscate all wood and vehicles that are involved in woodcutting.

This is our official notice to your Tribe until which time your elected Council cooperates by attendance at a General Council Meeting of our Tribe to develop a cooperative agreement between both Councils.

Regarding our land, the enclosed Resolution was established by our General Council and will remain in effect unless changed by our General Council.

If you have concern for the benefit of your people, it will be wise to give this letter of notification your highest priority.

Sincerely,

Virgil Osuna
Tribal Chairman

VO/kj

Enclosures:

COPY

SANTA YSABEL Band of DIEGUENO INDIANS

Ben Scerato
Spokesman

Virgil Osuna
Secretary

Don Beresford
Councilman

Tracts 1, 2 and 3
P.O. Box 130, Santa Ysabel, CA 92070
Tele: (619) 765-0845 Fax (619) 765-0320

Henry La Chuse
Vice-Spokesman

Victor Paipa
Treasurer

Alvin Guachino
Councilman

Faxed to IHS 2-9-98

WATER SERVICE ON TRACT 2

NUMBER: TCR-275
DATE: JANUARY 11, 1998

WHEREAS: The Santa Ysabel Band of Mission Indians is a federally recognized tribe under the United States Department of Interior Bureau of Indian Affairs, and

WHEREAS: The Santa Ysabel Band of Mission Indian's General Council has B.I.A. authority to preside over land issues and approve land sites for the purpose of housing and improvements on Tracts 1, 2, and 3, and

WHEREAS: The Mesa Grande Band of Mission Indians has applied for and EPA Border Facilities Planning and Construction Project Grant, and

WHEREAS: Mesa Grande Band of Mission Indian members homes on Tract 2 are served by the community and individual water systems and individual septic systems are in need of repair/replacement, and

WHEREAS: The Santa Ysabel Band hereby grants permission to the Indian Health Service, its representatives and contractors to enter upon or across tribal lands under the control of the Band without charge, for the purposes of planning, design and conducting engineering feasibility studies, including water source exploration, soils investigations, preliminary archaeological, topographical, and right-of-way surveying, as well as the construction of up-graded and/or new water system and sanitation systems, and

WHEREAS: The Santa Ysabel Band grants permission for easements for water main and service line extensions and their actual construction as well as construction of new water wells or storage tanks and the rehabilitation of existing wells and storage tanks and water lines as deemed necessary by the EPA, RCAC, or I.H.S to include water supply and wastewater disposal facilities for the homes of Robert Dominguez, Rae Ann Lafferty, Fred Murillo, Larry Angel, Darrel Langley, Andrea Beresford, and Norm Martinez as outlined in the attached I.H.S. letter of June 27, 1997, and

WHEREAS: The General Council has approved this request.

THEREFORE BE IT RESOLVED that the EPA or I.H.S. provide the necessary water and sanitation facilities to the Housing sites.

CERTIFICATION

At a duly called General Council Meeting on JANUARY 11, 1998, where a quorum was established, the foregoing was adopted by a vote of 28 for, 0 against, 0 abstentions.

Ben Scerato, Tribal Spokesman

Vice-Spokesman (absent)

Virgil Osuna, Tribal Secretary

Victor Paipa, Tribal Treasurer

Don Beresford, Tribal Councilman

Alvin Guachino, Tribal Councilman

SANTA YSABEL Band of DIEGUENO INDIANS

Johnny M. Hernandez
Spokesman

Brandie S. Taylor
Vice Spokeswoman

Bonnie Salgado
Councilwoman

Tracts 1, 2 and 3
P. O. Box 130
Santa Ysabel, CA 92070
Tele: (760) 765-0845 • Fax: (760) 765-0320

Marion F. Linton "Concha"
Tribal Council Treasurer

Anthony Balcone
Secretary

Rodney J. Kephart
Councilman

August 13, 2007

Mark Romero, Chairman
and Mesa Grande Tribal Council Members
Mesa Grande Band of Mission Indians
PO Box 270
Santa Ysabel, CA 92070

Re: SANTA YSABEL GENERAL COUNCIL RESOLUTION (GCR) 07-36, TO REPLACE GCR 07-12 REGARDING REQUESTS FOR USE AND/OR OCCUPATION OF SANTA YSABEL RESERVATION LAND BY MESA GRANDE BAND OF MISSION INDIANS GOVERNMENT AND TRIBAL MEMBERS

Dear Chairman Romero and Members of the Mesa Grande Tribal Council:

On behalf of the Santa Ysabel Band of Diegueno Indians, please find enclosed the above referenced General Council Resolution. The Tribe's General Council passed this resolution on August 12, 2007. This resolution replaces GCR 07-12 sent to you in July 2007.

This resolution, in essence, terminates the ability of the Mesa Grande Tribe or Mesa Grande members to request additional Santa Ysabel reservation lands. This decision was based on the needs of Santa Ysabel Tribal members. Please read the resolution and share it with your tribal community.

It is anticipated that the Santa Ysabel Tribal Council will request to meet with you in the near future to discuss implementation of this resolution. If you have any questions in between that time, please feel free to call me at 760-765-0845. Thank you for your time.

Sincerely,

Johnny M. Hernandez, Chairman

GENERAL COUNCIL RESOLUTION #07-36

REGARDING REQUESTS FOR USE AND/OR OCCUPATION OF SANTA YSABEL RESERVATION LAND BY MESA GRANDE BAND OF MISSION INDIANS GOVERNMENT AND TRIBAL MEMBERS

Discussed and approved at a meeting of the General Council of the Tribe held on August 12, 2007 at 10:30 a.m. in the gymnasium on the Santa Ysabel Reservation in Santa Ysabel, California

WHEREAS, The Santa Ysabel Band of Diegueno Mission Indians (the "Tribe") is a federally recognized Indian tribe organized and governed pursuant to the laws and customs and traditions of the Tribe; and,

WHEREAS, By custom and tradition, the adult members of the Tribe voting in the form of a General Council is the supreme governing body of the Tribe; and,

WHEREAS, By custom and tradition, the Tribe's elected six-member Tribal Council (the "Tribal Council") including the Chairman of the Tribal Council (the "Chairman") are vested with the authority to carry out the decisions made on behalf of the Tribe by the General Council; and,

WHEREAS, the Tribe has formed a Tribal government that is vested with the responsibility to govern the Tribal community and to provide for the health, safety and welfare of its Tribal members and to preserve and protect the Santa Ysabel Reservation land base for the use and occupation of our future generations; and

WHEREAS, the Tribe has permitted, over a period of years, Mesa Grande Tribal government and members to occupy Santa Ysabel Reservation land for Tribal government functions and residential purposes; and

WHEREAS, on June 3, 2007, the General Council passed GCR 07-19, to address requests for use and/or occupation of Santa Ysabel reservation land by Mesa Grande Band of Mission Indians government and Tribal members; and

WHEREAS, since the passage of GCR 07-19, the Tribe has continued to have concerns that the Tribe's members may not have the ability to occupy land on Tracts 1 or 2 of the Santa Ysabel Reservation due to current occupation by Mesa Grande Tribal members and/or the Mesa Grande Tribal government;

WHEREAS, the Tribe desires to further develop the law and policy passed under GCR 07-19, that will terminate the ability of the Mesa Grande government or Mesa Grande members to request to occupy additional Santa Ysabel Reservation land; and

WHEREAS, the Tribe recognizes and reaffirms that this discretionary grant of authority for the Mesa Grande government or Mesa Grande Tribal members to occupy Santa Ysabel Reservation land is a revocable privilege and not a conferred right to any

Mesa Grande official or member; and

THEREFORE BE IT RESOLVED THAT;

The Tribe hereby adopts and implements the following law and policy pursuant to the sovereign status of the Santa Ysabel Band of Diegueno Indians;

1. No further requests for the use and/or occupation of Santa Ysabel reservation land shall be considered by the Tribal Council or General Council of the Santa Ysabel Band. Such requests include those from family members living with Mesa Grande members on Santa Ysabel reservation land.

2. All Mesa Grande government buildings and Mesa Grande member and non-Santa Ysabel member homes will be subject to a lands inventory and/or survey to be conducted by the Santa Ysabel Band.

3. All Mesa Grande government officials and Tribal members utilizing and/or occupying Santa Ysabel land will be required to reduce their building and/or home site to ½ acre, subject to the approval of the Santa Ysabel Band.

4. No Mesa Grande government official or Tribal members are permitted to construct any new buildings, structures, or homes on Santa Ysabel land that they now utilize or occupy. This includes trailers, motor homes, manufactured homes or any mobile or permanent structure that is to be used for any length of occupation to exceed fourteen (14) days.

5. No use or occupation of land will automatically pass from one Mesa Grande member to another; whether upon death, revocation, etc.

6. If applicable, provisions for just compensation shall be made for Mesa Grande member or Mesa Grande government property that is on Santa Ysabel reservation land.

7. The above stated law and policy shall be applicable to the Mesa Grande government and all Mesa Grande Tribal members and non-Santa Ysabel Tribal members, subject to other legal agreements, including but not limited to BIA approved land leases, as approved by the Santa Ysabel Band.

NOW, THEREFORE BE IT RESOLVED, that the General Council hereby approves the above stated policy regarding the use and/or occupation of Santa Ysabel Reservation land by Mesa Grande government officials or Tribal members and directs the Tribal Council and Chairman to take the necessary actions to carry out the intent of this resolution. This resolution replaces and supersedes any other resolution, law, or policy regarding the subject matter.

CERTIFICATION

THE FOREGOING RESOLUTION was, on August 12, 2007, duly adopted by a vote of: 53 **votes for**; 0 **votes against**; with 0 **members abstaining**, by the General Council of the Santa Ysabel Band of Diegueno Mission Indians pursuant to the authority vested in it by its status as a federally-recognized Indian tribe and the Articles of Association of the Tribe dated June 2, 1974, as amended and the customs and traditions of the Tribe.

Johnny M. Hernandez,
Chairman of the Tribal Council

Anthony Balcone,
Secretary of the Tribal Council

ATTENTION

If you are not a Santa Ysabel Tribal Member you are considered trespassing. The Executive Branch of the Santa Ysabel Council will be in contact with the Mesa Grande Tribal Council.

PLEASE CALL
BRANDIE TAYLOR
(760) 765-0845

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

# 154334 - MB

August 21, 2008
12:20:56

Civ Fil Non-Pris
USAO #.: 08CV1544 CIVIL FILING
Judge..: LARRY A BURNS
Amount.: $350.00 CK
Check#.: BC3035805

Total-> $350.00

FROM: MESA GRANDE BAND OF MISSION
INDIANS VS DIRK KEMPTHORNE, ET

ORIGINAL

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

FILED

08 AUG 21 PM 12:19

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: DEPUTY

I. (a) PLAINTIFFS

MESA GRANDE BAND OF MISSION INDIANS

(b) County of Residence of First Listed Plaintiff: San Diego County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

MORRISON & FOERSTER LLP (415) 268-7000
425 Market Street, San Francisco, CA 94105

DEFENDANTS

DIRK KEMPTHORNE, Secretary of the U.S. Department of the Interior and DOES 1-100

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known) '08 CV 1544 LAB NLS

BY FAX

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated or Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med. Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence

Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt.Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 463 Habeas Corpus - Alien Detainee
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☒ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900 Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
5 U.S.C. §§ 701-706; 25 U.S.C. § 345

Brief description of cause:
violation of trust duties and APA

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND $ CHECK YES only if demanded in complaint: JURY DEMAND: ☐ Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE 08/20/2008 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # 153334 AMOUNT $350.00 APPLYING IFP JUDGE MAG. JUDGE

PB 08/21/08

CR